

From: Ray Petrone
To: Microsoft ATR
Date: 1/26/02 1:05pm
Subject: Microsoft Settlement

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Dear Attorney General Ashcroft and Ladies and Gentlemen:

Let me start by quoting verbatim from Section 3. of the Complaint against Microsoft as posted:

"There are high barriers to entry in the market for PC operating systems. One of the most important barriers to entry is the barrier created by the number of software applications that must run on an operating system in order to make the operating system attractive to end users. Because end users want a large number of applications available, because most applications today are written to run on Windows, and because it would be prohibitively difficult, time-consuming, and expensive to create an alternative operating system that would run the programs that run on Windows, a potential new operating system entrant faces a high barrier to successful entry."

Yes, there are high barriers to entry in the market for PC operating systems just as there are barriers in the auto manufacturing industry and others. Yes, I understand that there are several major competitors there but General Motors was the dominant player until GM's lack of vigilance and natural free market forces changed that situation over the last one or two decades.

Oracle has enjoyed a somewhat different but similar position in the market for corporate databases. The issue of applications was similar but the advancement of middleware and market demand for an abstraction layer for access has leveled that playing field. UNIX and its variants were supposedly going to be the only viable operating system of the future. Linux still thinks it is viable and even superior but the public by and large doesn't seem to agree despite the protestations by Linux authors and advocates claiming plenty of applications. Finally, many feel that AOL (including the Netscape merger entity) may have a similar market position which may be the ultimate irony since their Netscape subunit was a prime influence in this suit being brought against Microsoft. I have heard AOL customers say they feel trapped by simple things like their email address on AOL known to their friends. Recall that AOL doesn't provide a forwarding service like phone companies and the US Mail Service (shouldn't they by law?).

I feel you give far too little credit to natural market forces in your evaluation of evidence and make far too much of what little evidence I have seen or read. Have you no faith in our free market society as prescribed by law? And you give far too much credit to a few snippets of emails out of tens of millions of words calling them a pattern of abuse and misconduct. Have you considered that it is our free market system that has created the giant software company known as Microsoft through natural selection of the vast majority of commercial and home customers? It is yet another irony that the DOJ was able to create a successful case in part because it uses Microsoft products that enhance productivity and collaboration. And is it not evident that application developers prefer to write applications to a single platform or interface. Indeed, there are still many companies fairing quite well by writing non-portable applications to COBOL on IBM's former MVS platform. Please recall the near revolt in the 70s when IBM switched its commercial customers (were no home customers then because there was no Microsoft DOS or Windows) from IBM DOS to MVS as the new Mainframe standard? Some customers switched to competing vendors. Some swore to get revenge no matter how long it took while others made the move kicking and fighting because of the mountain of work needed to port applications and JCL.

Moving on to Section 5. of the Complaint--verbatim text is here for reference:

"5. To protect its valuable Windows monopoly against such potential competitive threats, and to extend its operating system monopoly into other software markets, Microsoft has engaged in a series of anticompetitive activities. Microsoft's conduct includes agreements tying other Microsoft software products to Microsoft's Windows operating system; exclusionary agreements precluding companies from distributing, promoting, buying, or using products of Microsoft's software competitors or potential competitors; and exclusionary agreements restricting the right of companies to provide services or resources to Microsoft's

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software competitors or potential competitors."

Your case for tying seems weak at best. I think the Appeals Court said that before me. There were times when Microsoft had to work hard to disengage agreements involving "BUNDLING ", at the OEM's request, (not tying) Windows and Office. Competitors like Compaq and HP cried foul and I have seen the email and such complaints personally. I fail to see where you proved the rest of the allegations in this section but let's assume that you did since the courts would seem to agree and that is the way our system works. Let's set aside the lower court Judge's misconduct as well.

Moving on to Section 10. of the complaint and I quote again verbatim:

"10. To respond to the competitive threat posed by Netscape's browser, Microsoft embarked on an extensive campaign to market and distribute Microsoft's own Internet browser, which it named "Internet Explorer" or "IE." Microsoft executives have described this campaign as a "jihad" to win the "browser war."

Yes, they did, didn't they. I heard it personally. And John Young at HP and Larry Ellison at Oracle and Scott McNealy at Sun Microsystems Steve Jobs of Apple and countless others have used equally eyebrow-raising "battle cries" that incorporate words such as "crush, kill, demolish, life-and-death struggle" and so on. Perhaps it isn't in good taste, particularly after events of this past year. That could be debated endlessly. This is done so routinely at American Corporate Sales Meetings that it makes this citation almost laughable. Such invocations are meant to be motivational and that is obvious to even the most casual observer. Occasionally, some poor soul might take to levels only expected from a cult member. Microsoft's employee handbook specifically warns employees not to engage in unethical or illegal acts when competing with termination as the consequence.

The difference between corporate euphemisms like these and statements by governments is this. When governments speak of killing that is precisely what they mean. If you wish to represent the American people fairly then please refrain from such citations in the future. I believe the DOJ should tone down the rhetoric and make better use of its time and our money. One could dissect each section of the complaint, findings and judgment of the Appeals Court but then that individual would be guilty of over-pursuing this matter in the same way that has been done by the DOJ in my humble opinion. Ladies and gentlemen, the "foul" that has alleged just isn't felt by the majority of the public, or if it were, individuals would rush in droves to Linux and its followers who claim application compatibility without any significant reservation.

I cannot finish without commenting on one section of the Competitive Impact Statement (from the Overview of Relief)...

(Microsoft)...1) undertook a variety of restrictions on personal computer Original Equipment Manufacturers ("OEMs"); (2) integrated its Web browser into Windows in a non-removable way while excluding rivals; (3) engaged in restrictive and exclusionary dealings with Internet Access Providers, Independent Software Vendors and Apple Computer; and (4) attempted to mislead and threaten software developers in order to contain and subvert Java middleware technologies that threatened Microsoft's operating system monopoly.

Here is a point-by-point response:

- 1) Maybe. So far, this is a so-what since Contracts are restrictive by definition from my recollection of Business Law.
- 2) Integrated its browser in non-removable way? Similar to the radio in my car? No. It's easier to add a browser than a new radio and much cheaper as in "free" thanks to free enterprise, Microsoft and the former Netscape now part of AOL.
- 3) In the matter of Microsoft's dealings with Apple, let the record reflect how Microsoft

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kept Apple financially viable with loans (\$350M?) and the last version of Microsoft Office for the Mac. The latter charitable act made, at best, only modest economic sense for Microsoft from what I can.

4) Our IRS in very simple matters involving small sums probably routinely usurps its power far more than the instances I have seen the DOJ cite. As for subverting Java middleware, you give too much credit to Microsoft and too little to Sun Microsystems from what I hear from dozens of developers I know.

At long last in conclusion, I urge you to take the settlement as it stands and move on. Yes, it would have been nice to have another billion in software, services and so on for our poorest schools but we've lost that chance, haven't we. We will have to count on the oft-demonstrated philanthropy of Mr. Gates and Microsoft employees and Alumni to make up for that loss and, to an extent, they will although the concentrated consulting assistance will be hard to replace with a volunteer effort. (Are there plans to investigate the illegality of all corporate donations to schools where a smaller competitor is a vendor?) Again, please just move on and count this one in the win column at your press conference.

Sincerely,

Raymond Petrone, P.E.

Concerned Citizen

Diligent Taxpayer

Honorably Discharged Member of the Armed Forces

Vietnam-era Veteran

Donator of Time to Georgia's Universities (partly from the knowledge gained at Microsoft)

Former Microsoft Employee

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